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**COMMONWEALTH OF VIRGINIA, ex rel.**

**STATE CORPORATION COMMISSION**

**v.**

**FERRIS, BAKER, WATTS INCORPORATED,  
ROBERT L. BUTLER,**

**CASE NO. SEC000035  
CASE NO. SEC000036**

**Defendants**

**REPORT OF HOWARD P. ANDERSON, JR., HEARING EXAMINER**

**October 24, 2000**

**HISTORY OF THE CASE**

On May 11, 2000, the State Corporation Commission entered a Rule to Show Cause against Ferris, Baker, Watts Incorporated ("FBW") and Robert L. Butler ("Butler") ordering them to appear before the Commission on June 27, 2000, to show cause why they jointly or severally should not be penalized for violations of certain sections of the Securities Rules and the Virginia Securities Act (the "Act") alleged by the Commission's Division of Securities and Retail Franchising (the "Division"). Specifically, the Rule to Show Cause alleges that:

1. Beginning in 1995, Butler executed 406 unauthorized trades of securities and FBW executed 405 unauthorized trades of securities in the accounts of ten (10) Virginia clients in violation of Securities Rules 21 VAC 5-20-280 B 6 and 5-20-280 A 4.
2. Beginning in 1995, Butler and FBW executed said trades of securities without written discretionary authority in violation of Securities Rules 21 VAC 5-20-280 B 6 and 21 VAC 5-20-280 A 5.
3. FBW failed to exercise diligent supervision over the securities activities of Butler to prevent each violation and by such conduct violated Securities Rules 21 VAC 5-20-260 A and B for each transaction.

On June 19, 2000, the Division, by counsel, moved for a continuance, alleging failure of FBW and Butler to provide certain information necessary to prepare the case. By Hearing Examiner's Ruling of June 23, 2000, the hearing was continued generally. By Hearing Examiner's Ruling of June 26, 2000, the hearing was rescheduled for September 26, 2000.

Counsel appearing at the hearing were Debra M. Bollinger for the Division and James C. Cosby for FBW and Butler. Counsel advised that they had reached a settlement in this matter. The final executed settlement was not available at the hearing, therefore an exhibit number was

reserved. A copy of the settlement is attached to this Report. A transcript of the proceeding is being filed with this Report.

### **DISCUSSION**

Among the measures contained in the settlement are requirements that FBW and Butler refrain from any further conduct that constitutes a violation of the Act or the Rules promulgated thereto. FBW agrees to take measures to assure compliance with Securities Rules and to file a written report with the Division no later than ninety (90) days from the date of the Settlement Order, setting forth actions taken. Oversight of Butler by FBW will be conducted for a period of twelve months to ensure compliance with the Act and Securities Rules. Under the terms of the settlement, FBW will offer to reimburse with interest the six Virginia customers who experienced a loss in their accounts as indicated on Schedule A<sup>1</sup> of the settlement. Pursuant to § 13.1-521 of the Code of Virginia, FBW will pay \$40,000 to the Commonwealth and will pay the sum of \$10,000 to the Commission as reimbursement for the costs of the Division's investigation.

I find the settlement should be accepted and **RECOMMEND** the Commission enter an order adopting this finding and accepting the settlement proffered.

### **COMMENTS**

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and Commission Rule 5:16(e)) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within fifteen (15) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

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Howard P. Anderson, Jr.  
Hearing Examiner

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<sup>1</sup>The original Schedule A was revised. Amended Schedule A, attached to this Report, contains a list of Virginia investors, settlement amounts, and the amount of interest that will be offered to the Virginia investors.

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND,

COMMONWEALTH OF VIRGINIA, ex rel.

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v.

FERRIS BAKER WATTS, INCORPORATED,  
ROBERT L. BUTLER,  
Defendants

CASE NO. SEC000035  
CASE NO. SEC000036

SETTLEMENT ORDER

The Commission's Division of Securities and Retail Franchising ("Division") has conducted an investigation of Defendants, Ferris Baker Watts, Incorporated ("FBW"), and Robert L. Butler ("Butler") pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia.

As a result of its investigation, the Division alleges that Defendants, a broker-dealer and its agent so registered under the Act, have:

(A) In violation of Securities Act Rule 21 VAC 5-20-280 A. 4., through one of its registered securities agents, Robert L. Butler, executed trades in the accounts of ten (10) Virginia residents without the authority to do so.

(B) In violation of Securities Act Rule 21 VAC 5-20-280 A. 5., through one of its registered securities agents, Robert L. Butler, exercised discretionary power in effecting trades

in the accounts of ten (10) Virginia residents without first obtaining written discretionary authority from the customer.

(C) In violation of Securities Act Rule 21 VAC 5-20-260 B, failed to exercise diligent supervision over the securities activities of one of its agents, Robert L. Butler.

Defendants neither admit nor deny the allegations, but admit the Commission's jurisdiction and authority to enter this Order.

As a proposal to settle all matters arising from the allegations made against Defendants, FBW has proposed and agrees to comply with the following terms and undertakings:

(1) FBW and Butler will refrain from any further conduct that constitutes a violation of the Act or the Rules promulgated thereunder.

(2) FBW will file a written report with the Division by no later than ninety (90) days from the date of this Settlement Order setting forth the following:

(a) The procedures it has developed to ensure compliance with Rule 21 VAC 5-20-280 A. 4., Rule 21 VAC 5-20-280 A. 5., and Rule 21 VAC 5-20-260 B. as promulgated under the Act.

(b) The name(s) of the individual(s), including any subsequent appointments, overseeing compliance with Rule 21 VAC 5-20-280 A. 4., Rule 21 VAC 5-20-280 A. 5., and Rule 21 VAC 5-20-260 B. as promulgated under the Act.

(3) (a) FBW, shall for a period of twelve (12) months from the date of this Order, appoint a member of FBW's compliance department to (i) review the opening of all Butler's Virginia customer accounts to detect and prevent

irregularities, (ii) review every transaction effected for Butler's Virginia customers on a weekly basis to determine if any irregularity or abuse occurred in connection with any such transaction, (iii) review at least five (5) of Butler's active Virginia customer accounts, selected at random, on a monthly basis to determine if the customers have any complaints about Butler's actions in connection with their accounts or any transactions effected for their accounts, including requesting the nature of the effected transaction and in addition to determine if the transaction was specifically authorized. An active customer is one who has an account in which at least one transaction has been effected since the beginning of the current monthly review period.

(b) For a period of twelve (12) months from the date of this Order, FBW's compliance department shall establish and maintain a written record which shall state (i) the name and address of each of Butler's active Virginia customer contacted, (ii) the date each customer was contacted, (iii) the name and title of the person who contacted each customer, and (iv) the means by which each customer was contacted. This record shall be submitted on a quarterly basis to the Division and a final report covering the entire period shall be submitted to the Division at the end of twelve (12) months with a request for termination of the special supervisory requirement. Special supervision will be terminated if the record shows no violations of the Division's statutes or rules.

(c) If during the twelve (12) month period FBW discovers any irregularity or abuse in connection with any transaction effected for Butler's customers or

receives a complaint from any of Butler's Virginia customers, it shall promptly notify the Division in writing.

- (6) FBW will offer to reimburse the six (6) Virginia customers a sum plus 6% interest for three (3) years based upon Schedule A attached hereto and incorporated herein by reference. The offer will remain open for a period of thirty (30) days. The customers accepting reimbursement shall enter into a release of all claims with FBW.
- (7) FBW, pursuant to § 13.1-521 of the Code of Virginia, will pay a sum to the Commonwealth in the amount of forty thousand dollars (\$40,000.00).
- (4) FBW, pursuant to § 13.1-518 of the Code of Virginia, will pay to the Commission the sum of ten thousand dollars (\$10,000.00) as reimbursement for the costs of the Division's investigation.
- (5) It is recognized and understood that if Defendant fails to comply with any of the foregoing terms and undertakings, then the Commission reserves the right to take whatever action it deems appropriate, including, but not limited to, instituting a show cause proceeding under the Virginia Securities Act or other applicable statute based on such failure to comply, on the allegations contained herein and/or on such other allegations as are warranted, and Defendant will not contest the exercise of the right reserved.

The Division has recommended that Defendants' offer of settlement be accepted pursuant to the authority granted to the Commission in § 12.1-15 of the Code of Virginia.

NOW, THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to the authority granted to the Commission in § 12.1-15 of the Code of Virginia, Defendants' offer of settlement is accepted;
- (2) Defendants fully comply with the aforesaid terms and undertakings of the settlement;
- (3) FBW will file a report with the Division by no later than ninety (90) days from the date of this Order setting forth the following:
  - (a) The procedures it has developed to ensure compliance with Rule 21 VAC 5-20-280 A. 4., Rule 21 VAC 5-20-280 A. 5., and Rule 21 VAC 5-20-260 B., as promulgated under the Act.
  - (b) The name(s) of the individual(s), including any subsequent appointments, overseeing compliance with Rule 21 VAC 5-20-280 A. 4., Rule 21 VAC 5-20-280 A. 5., and Rule 21 VAC 5-20-260 B., as promulgated under the Act.
- (4) (a) FBW shall, for a period of twelve (12) months from the date of this Order, appoint a member of FBW's compliance department to (i) review the opening of all Butler's Virginia customer accounts to detect and prevent irregularities, (ii) review every transaction effected for Butler's Virginia customers on a weekly basis to determine if any irregularity or abuse occurred in connection with any such transaction, (iii) review at least five (5) of Butler's active Virginia customer accounts, selected at random, on a monthly basis to determine if the customers have any complaints about Butler's actions in connection with their accounts or any transactions effected for their accounts,

including requesting the nature of the effected transaction, and in addition, to determine if the transaction was specifically authorized. An active customer is one who has an account in which at least one (1) transaction has been effected since the beginning of the current monthly review period.

(b) For a period of twelve (12) months from the date of this Order, FBW's compliance department shall establish and maintain a written record which shall state (i) the name and address of each of Butler's active Virginia customer contacted, (ii) the date each customer was contacted, (iii) the name and title of the person who contacted each customer, and (iv) the means by which each customer was contacted. In all cases, the contact person should attempt to make a personal contact. This record shall be submitted on a quarterly basis to the Division and a final report covering the entire period shall be submitted to the Division at the end of twelve (12) months with a request for termination of the special supervisory requirement. Special supervision will be terminated if the report shows no violations of the Division's statutes and rules.

(c) If during the twelve (12) month period FBW discovers any irregularity or violation in connection with any transaction effected for Butler's customers or receives a complaint from any of Butler's Virginia customers, it shall promptly notify the Division in writing.

(5) FBW will reimburse the ten (10) Virginia customers a sum plus 6% interest for a period of three years based upon Schedule A attached hereto and incorporated herein by reference. The offer will remain open for a period of

thirty (30) days. The customers shall enter into a release of all claims with FBW.

- (6) Pursuant to § 13.1-521 of the Code of Virginia, FBW pay a penalty to the Commonwealth in the amount of forty thousand dollars (\$40,000.00) and the Commonwealth recover of and from Defendant said amount;
- (7) Pursuant to § 13.1-518 of the Code of Virginia, FBW pay to the Commission the amount of ten thousand dollars (\$10,000.00) for the cost of the Division's investigation;
- (8) That the sum of fifty thousand dollars (\$50,000.00) tendered by Defendant is accepted; and
- (9) That the Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding as described above, or taking such other action it deems appropriate, on account of Defendants' failure to comply with the terms and undertakings of the settlement.

SCHEDULE A

		\$ (2,540.85)
		\$(46,176.53)
		\$(2,256.78)
		\$(1,959.95)
		Gain
		\$ (2,411.66)
		Gain
		Gain
		\$(5,476.07)

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CONSENT

The Defendants, Ferris Baker Watts, Incorporated and Robert L. Butler, admit the jurisdiction of the Commission as to the party and subject matter and, without admitting or denying allegations made herein by the Division of Securities and Retail Franchising, hereby consent to the form, substance, and entry of the foregoing Settlement Order.

The Defendants further state that no offer, tender, threat, or promise of any kind whatsoever has been made by the Commission, or any member, officer, agent, or representative thereof in consideration of the foregoing Settlement Order.

Dated: \_\_\_\_\_

Ferris Baker Watts, Incorporated,

By: \_\_\_\_\_

Title: \_\_\_\_\_

Federal Tax ID No: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Robert L. Butler